United Nations A/HRC/25/NI/2

General Assembly

Distr.: General
25 February 2014

Original: English, French and Spanish

Human Rights Council
Twenty-fifth session
Agenda item 1
Organizational and procedural matters

Information presented by the National Human Rights Council of Morocco*

Note by the Secretariat

The Secretariat of the Human Rights Council hereby transmits the communication submitted by the National Human Rights Council of Morocco**, reproduced below in accordance with rule 7(b) of the rules of procedures described in the annex to Council resolution 5/1, according to which participation of national human rights institutions is to be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005.

* National human rights institution with "A"-status accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

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Annex

[English only]

Information presented by the National Human Rights Council of Morocco to the high-level panel on human rights mainstreaming under the theme of protection and promotion of the human rights of migrants

Foreigners and Human Rights in Morocco for a radically new asylum and migration policy

The Eleventh International Conference of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights took place in Amman, Jordan from 5-7 November 2012 and was hosted by the Jordan National Centre for Human Rights (JNCHR), in cooperation with the Office of the High Commissioner for Human Rights (OHCHR) and the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). The focus of the Conference was "The human rights of women and girls: Promoting gender equality: The role of national human rights institutions."

In a joint paper published in July 2013, the National Human Rights Council (CNDH), the Délégation interministérielle aux droits de l'Homme (DIDH) and the Rabat Office of the International Organization for Migration painted a reality of migration that remains true today. With 240 million international migrants worldwide in 2012 (and 740 million internal migrants), migration constitutes nowadays, almost everywhere in the world, a subject of concern and constant debate, and even controversy, of much concern to governments, civil societies, researchers and international human rights organizations. Polemical approaches persist and are reinforced even as the 2009 report of the United Nations Development Programme (UNDP) has emphasized the central role that population mobility plays in human development.

The affected populations are unevenly distributed: South-North movements account for 97 million migrants, South-South for 74 million, North-North for 37 million, North-South for 40 million, "and the remaining being made up of east-west migrations and, more rarely, west-east" (De Wenden, 2013).

These figures reveal first and foremost the globalization of migration, which has been taking place for two to three decades; to such an extent that today more and more countries, regardless of their level of development, are simultaneously countries of emigration, transit, and immigration. Second, these figures also reflect the emergence of complex regional and sub-regional migratory systems, transnational networks of diaspora, and sophisticated networks dedicated to human trafficking.

The feminization of migration, the extension of migratory routes, the diversification of migrants' and refugees' profiles, and the rise in their socio-cultural level are also salient features of this second wave of contemporary migration, which began in 1980.

However if human migrations constitute in the long run a factor of financial gain for the sending and receiving societies, a stimulus to economic activity, and a source of cultural development, they still remain an issue of concern, increasingly exploited during national elections, leading to the introduction of drastic legal measures in order to control migrants' entries to national territories and the residency of settled populations.

On the international level, especially since the United Nations launched its high-level dialogue on migration, the subject of renewed international governance of human mobility is regularly raised. In this regard, both within national borders and internationally, the issue of human rights has become unavoidable. It is the only measure guaranteeing the basic human rights of migrants, regardless of their administrative situation, as well as providing the necessary approach to build long-term migration policy respectful of rights, of a democratic society and fruitful exchange between cultures and civilizations.

In order to understand the developments that have taken place in Morocco in the field of migration and asylum, it is important to consider the long-term history of the country as well as the aforementioned international changes of the last few decades.

Thus, Morocco is both a sending and a receiving country in terms of migration: a land of emigration since the first wave of the First World War and a land of immigration and settlement, even if the collective consciousness has not yet incorporated these facts.

Located in Africa, a continent facing the challenges of development and regularly shaken by political crises and armed conflicts, Morocco cannot remain on the sidelines without paying attention to the consequences of this troubling and likely protracted situation.

Finally, Morocco undoubtedly suffers from the effects of a strict European policy of control of its external borders.

For all these reasons, Morocco has become a land of asylum and long-term settlement for migrants. It welcomes regular immigrant workers, a relatively large number of foreign students, migrants with an irregular status, "in transit" often for years, and finally asylum seekers and refugees. To these migrations, we can add groups who have been settled in Morocco for generations (Algerians or Syrians for example, and various European nationalities) and an increase of migration as illustrated, for example, by the circular migration of an elite of highly qualified professional workers between Europe and Morocco, or by the extended stays of European pensioners, particularly French retirees.

The combination of these diversified forms of migration makes Morocco, gradually and irreversibly, a cosmopolitan country. The regular and irregular emigration of Moroccans and the growing visibility of new populations of emigrants in Moroccan cities (Chinese, Filipino, or even Nepali as some security arrests have revealed) undoubtedly attest to the fact that Morocco is concerned by the globalization of human mobility. It is this complex reality, which constitutes both a challenge and an opportunity, which is eclipsed by the widely publicized but reductionist image of the sub-Saharan wandering in Moroccan streets, driven to rely on public charity, or attacking regularly as part of a crowd, the borders of the two occupied enclaves.

Faced with this historically unprecedented situation, Moroccan public authorities have acted in an ad hoc manner, without a well-conceptualized and comprehensive initiative adapted to the new realities.

In 2003, a law on the entry and residency of foreigners, illegal emigration and immigration was adopted, followed in 2007 by the signing of an agreement with the UNHCR, delegating the review and the granting of asylum applications. Simultaneously, and with the support of the European Union, a policy of control of illegal emigration has been put in place, with real successes as evidenced by the numbers of arrests and the statements of satisfaction from various European countries.

The increased control of borders is accompanied by regular operations targeting identity checks and arrests in various urban centers or in the forests surrounding the occupied enclaves of Sebta and Mellilia, followed by campaigns of expulsion and return to the Algerian or Mauritanian borders. These campaigns have given rise to numerous violations of the rights of migrant's irregular situations (arrests of refugees, violence and

mistreatment, rejections without referral to justice, etc.), these are added to the violence of offenders and human traffickers and the violations suffered by the migrants during their long migration route, sometimes even before their entry into the national territory.

The authorities argue their right to punish illegal entry and sojourn, to combat the trafficking in human beings and to fight the attempts, also illegal, of crossing of international borders and in particular those with the occupied enclaves. They sometimes contend that they are fighting violent groups engaged in illegal activities and trafficking.

Without contesting the right of Moroccan authorities to control the entry and stay of foreigners and their duty to fight against human trafficking, the CNDH believes that public authorities cannot, in the fulfillment of their missions, evade the constitutional provisions in the matter of human rights and rights of foreigners, the international commitments under the ratification of all the instruments of protection of human rights and in particular, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the UN Convention against Torture, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families and the 1951 Refugee Convention.

The latest initiative is the June 2013 signing of a joint declaration establishing a mobility partnership between the Kingdom of Morocco and the European Union and its member states.

Based on this collection of elements, the CNDH calls on public authorities, all social actors and state partners of Morocco to take note of these new realities and to act together to develop and implement a genuine public policy that protects human rights, based on international cooperation and integrating civil society. By raising this challenge, Morocco could provide a positive example for many countries of the South faced with similar problems.

The CNDH considers that this policy should integrate at least the following four major components:

Concerning the situation of refugees and asylum seekers, the CNDH invites the Moroccan government to take the following measures:

- To recognize, pending the introduction of a national legislation and institutional plan of asylum, refugee status as issued by UNHCR, and issue a residency document to statutory refugees;
- To establish a policy of integration of said refugees and their families, in terms of housing, health, schooling, training and employment;
- To allow married statutory refugees to proceed legally to family reunification;
- To ensure compliance with the principle of prohibition of expulsion or return (nonrefoulement) as a cornerstone of the right of the refugees, as mentioned in article 33 of the 1951 Geneva Convention by giving potential asylum-seekers the right to fill out, upon their arrival on the Moroccan territory, an asylum application;
- To establish a national legal and institutional framework of asylum, which is based on the principles set out in the preamble of the 2011 Moroccan constitution, and which organizes the status of refugees in Morocco and the conditions for the exercise of the right of asylum recognized in article 30 of the constitution;

- Pending the establishment of this system, to strengthen the partnership with the UNHCR and support its actions mainly by facilitating its access to asylum seekers across the country.

The CNDH is pleased that a few international donors have already expressed their willingness to participate financially in the efforts necessary to integrate refugees after the issuance of residence permits. It invites the government, the office of the UNHCR in Morocco and Moroccan civil society to begin discussions for the development and implementation of this policy of integration. It expresses its availability to contribute.

Concerning foreigners in irregular administrative status

The CNDH believes that it is time for the government to officially consider the development and establishment of an operation of special regularization of some categories of migrants in irregular administrative situations, according to criteria that take into account the duration of stay in Morocco, the right to family co-residence, the conditions for insertion in Moroccan society, the settlement agreements reached by the Kingdom with other state partners. The CNDH further urges the international organizations of the United Nations system, partner countries of Morocco, including European countries and the European Union, to work actively for the success of such operation by mobilizing human and financial resources for the implementation of a genuine policy of inclusion of regularized migrants.

Considering the economic and social constraints that weigh on a country like Morocco, an ambitious international cooperation is vital. The CNDH believes that this dimension should be included as one of the priorities of the recently signed mobility partnership.

Considering the fact that Morocco, like all other countries of the world, will sustainably accommodate groups of irregular migrants, and without questioning the right of authorities to control the entry and residence of foreigners, the CNDH strongly recalls that foreigners themselves are protected by all constitutional guarantees against discrimination, abuse, unfair trials, etc., and have rights affirmed by international law, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the recently adopted General Comment no. 2 of the Committee on Migrant Workers.

In this context, the CNDH invites the Moroccan government to take the following measures:

- To ensure effective access to justice for irregular migrants in the case of arrest, provisionary detention or trial (access to lawyers and interpreters, access to consular authorities, access to asylum procedures, access to care, etc.) ;
- To develop training programs and raise awareness among personnel responsible for dealing with immigrants (police, border police, prison staff, judges, health care staff, etc.);
- To pay particular attention to the material and legal support of unaccompanied foreign minors and of migrant women, in particular, the psychological and medical treatment of victims of violence ;
- To ban all forms of violence against undocumented migrants during arrest procedures;
- To take measures to discourage employers who exploit undocumented migrants, and guarantee access to labor inspectors without fear of retribution; To facilitate the registration of new births and issuing of death certificates.

Welcoming the efforts of members of civil society involved in the defense of the rights of migrants and asylum seekers, the CNDH believes that its active and collaborative involvement is essential to deal with historical changes outlined above. It calls for the establishment of a permanent platform for dialogue between the government and members of the national and international civil society, allowing the exchange of information, the mobilization of humanitarian assistance and legal expertise, the dissemination of good practices, assisted voluntary return, etc.

The integration of migrants' organizations in this process is critical, as is their regularization under the right of association, a situation facing some associations of migrant assistance, such as the GADEM.

Concerning the fight against the trafficking of persons

The CNDH invites the government to introduce in Chapter 7 of Title I of Book III of the Criminal Code provisions against the recruitment, transportation, transfer, harboring or reception of persons, by the use or threat of the use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, or by the offer or acceptance of payments or benefits to achieve the consent of a person having authority over another for purposes of exploitation.

In the same vein, the CNDH proposes that the definition of exploitation, at the end of this chapter, should include at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

The CNDH recommends including in the Criminal Code provisions protecting minors especially, considering the commission of a human trafficking offense against a minor as an aggravating circumstance.

In order to ensure effective protection of alleged victims of human trafficking, the CNDH proposes to amend article 82-7 of the Code of Criminal Procedure to ensure the protection of victims, witnesses, experts and whistleblowers with respect to cases involving the trafficking of persons.

Finally, and to facilitate the implementation of the above recommendations, the CNDH proposes that the government be guided by the provisions of the Model Law against Trafficking in Persons developed by the United Nations Office on Drugs and Crime (UNODC) in 2009.

To accompany the proposed legislative reforms, the CNDH recommends that the government:

- Launch a national survey on the phenomenon of human trafficking ;
- Develop, in a collaborative manner, a national plan of action to combat human trafficking ;
- Develop a specific training program to strengthen the capacity of law enforcement officials in their fight against human trafficking ;
- Strengthen cooperation between various departments involved in the fight against human trafficking (border police, national security, gendarmerie, justice, etc.) .
- Strengthen partnerships with organizations against human trafficking and for the protection of victims of abuse.

Concerning documented immigrants, the CNDH invites the government to carry out:

- The revision of articles 24, 25 and 26 of the Dahir No.1-58-376 of 3 Jumada I 1378 (15 November 1958) regulating the right of association as amended and supplemented by Act No. 75-00 and 07-09 aligning the legal status of foreign associations with that of national associations;
- The revision of Articles 3 and 4 of Law No. 9-97 forming electoral code as it has been amended and supplemented by the laws 23-06 and 36-08 and in order to give foreign nationals residing in Morocco the possibility to participate in local elections under the law, the application of the international conventions or practices of reciprocity, in accordance with the provisions of article 30 (§4) of the Constitution ;
- The revision of Article 416 of Law No. 65.99 constituting the electoral code, revised to permit migrant workers access to positions of management and leadership in trade unions to which they are affiliated ;
- The ratification of Conventions Nos. 97 and 143 of the OIT on migrant workers. Similarly, and given the importance of new guarantees offered by Article 8 of the Constitution with regard to trade union freedoms, the CNDH recommends the ratification of the ILO Convention 87 on the Freedom of Association and Protection of the Right to Organize.

Finally, the CNDH invites the government to negotiate systematically, in the framework of bilateral or multilateral economic agreements, and on the basis of reciprocity, the opening of the labor market while protecting the social rights of workers through adequate social clauses.

To succeed, the CNDH considers that this new public policy, urgent and breaking with the situation and current practices, requires an active involvement of all social actors in Morocco and its international partners. In this regard, the CNDH has arrived at the following recommendations that would achieve this objective.

Concerning the Parliament

Considering the central institutional place of the Parliament in the new constitution, which grants it sole authority in crafting and enacting laws, the CNDH urges for Parliament:

- To interact quickly and actively with the bills that the government should submit for discussion and adoption, in accordance with the recommendations listed above;
- To expedite the review of three legislative proposals tabled by parliamentary groups; these proposals were on the fight against racism and human trafficking.

Concerning the media

The CNDH urges the media and Moroccan journalists:

- To refrain from broadcasting any message inciting intolerance, violence, hatred, xenophobia, racism, anti-Semitism and discrimination toward foreigners ;
- To promote a balanced journalistic discussion and analysis of immigration by focusing also on its positive aspects ;
- To combat stereotypes and negative discourses on migration ;
- To actively contribute to awareness against racism and xenophobia.

The CNDH particularly recommends to journalists to be guided in their professional activity by UNESCO guidelines in the Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid

and Incitement to War, as well as those in the Declaration of Principles on Tolerance, adopted by UNESCO in 1978 and 1995, respectively.

Finally the CNDH recommends to the various public and private bodies responsible for the training of professional journalists to take all necessary measures to strengthen and develop, in learning and training, attitudes and behavior based on the recognition of equality, by fighting, particularly by means of appropriate teaching methods, against prejudice and stereotyping of foreigners.

Concerning businesses, the CNDH urges companies

- To ban any recourse to the employment of undocumented persons, and to regularize any employees in this situation ;
- To guarantee equal treatment with respect to wages and social rights ;
- To implement, especially for businesses in contact with foreigners, training programs of awareness about non-discrimination, similar to the program which will be implemented at the initiative of the company Royal Air Maroc to the flight attendants and ground staff, in partnership with the CNDH.

Concerning trade union action

In all countries of the world, union involvement alongside migrants has an important added value, not only for the defense of their rights, but also as instances of insertion of migrants in democratic civic action. In Morocco, the emergence of a group of migrant labor in the Democratic Labor Organization (ODT) in this respect is an excellent initiative.

In this context, the CNDH calls on the trade unions:

- To take into account the vulnerability of migrant workers and include this question in their trade union activities ;
- To develop campaigns to encourage membership of migrant workers in trade unions;
- To support migrants in efforts to pursue equitable settlements in work disputes.